



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,281	06/29/2001	Louise J. Kitchen	ENR001/136488	7189
7590	03/29/2005		EXAMINER	
Stephen S. Hodgson Vinson & Elkins L.L.P. 2300 First City Tower 1001 Fannin Houston, TX 77002-6760			DASS, HARISH T	
			ART UNIT	PAPER NUMBER
			3628	
			DATE MAILED: 03/29/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

*Off*

12

## Office Action Summary

Application No.	Applicant(s)	
09/895,281	KITCHEN ET AL.	
Examiner	Art Unit	
Harish T Dass	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 29 June 2001.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/29/01; 1/14/2002.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, claim 10, line 3 the phrase "and/or" renders the claims indefinite because, it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). For purpose of examination only, Examiner assumes that the claim limitation is "or".

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 6,317,727).

Re. Claim 1, May discloses determining a bid price and an offer price at which the party is willing to buy or sell, respectively, a good or service [see entire document particularly, Abstract; Figures 14-15; C2 L22-26; C9 L15-L29, L40-L43];

maintaining a list of determined bid prices and offer prices in a computer that is part of or linked to the computer network, wherein the list can be viewed, edited and maintained by the party, but cannot be viewed by any counterparty [Figure 22A; C12 L63 to C13 L5; C30 L50-L60];

providing the determined bid price and offer price for the good or service to the plurality of counterparties over the computer network, wherein the determined bid price and offer price that is provided is from the list [Figures 15-17, 22; C9 L27-L37];

receiving an offer to sell the good or service at the bid price from a first counterparty over the computer network, buying the good or service at the bid price from the first counterparty upon receipt of the offer to sell, and receiving an offer to buy the good or service at the offer price from a second counterparty over the computer network [Figure 1; C11 L23-L34; C14 L9-L13];

monitoring and evaluating a credit headroom before selling the good or service to the second counterparty using a computer software, wherein the computer software is adapted to determine whether the credit headroom would be exceeded if the offer to buy from the second counterparty is accepted [abstract; Figure 17; C1 L63 to C2 L5; C2 L24-L39; C10 L35-L48; C12 L3-L43];

selling the good or service at the offer price to the second counterparty upon receipt of the offer to buy and after determining the credit headroom would not be exceeded [C1 L63 to C2 L5; C2 L19-L39; C3 L42-L50; c51 L63 to C52 L23], and

providing to the plurality of counterparties over the computer network a next-determined bid price and offer price from the list so that the next-determined bid price and offer price is displayed to the plurality of counterparties nearly immediately after the party buys or sells the good or service, wherein a quantity, volume or an amount of the good or service is associated with each determined and next-determined bid and offer price [Figure 16; C53 L4-L39].

May does not explicitly disclose wherein there is no requirement to pay a commission to a third party for either the purchase or the sale of the good or service. It would have been obvious at the time the invention was made to a person having ordinary skill in the art that system of May does not include third party as trading party, such as: agent or broker, since May's system uses Internet, therefore for there is no requirement in May's system to pay a commission to a third party for either the purchase or the sale of the good or service to bring the transaction cost down and give chance to more people to trade using May's system.

Re. Claim 2, May discloses linking the list of determined bid prices and offer prices for a first good or service with the list of determined bid prices and offer prices for a second good or service [Figure 22A; C12 L63 to C13 L5; C30 L50-L60]; and changing the determined bid prices and offer prices for the first good or service in response to

changes in the determined bid prices and offer prices for the second good or service [C19-L47].

Re. Claim 3, May discloses wherein a difference is maintained between the determined bid prices and offer prices of the first good or service as compared to the determined bid prices and offer prices of the second good or service [C52 L24-L45].

Re. Claims 4-5, May discloses maintaining a spread between the next-determined bid and offer prices for a good or service, and setting the value of the next-determined bid and offer price using a last-transacted bid or offer price of that good or service [C20 L3-L61; C22 L33-L40]. May does not explicitly disclose the spread having a midpoint and wherein the next-determined bid price and offer price for a good or service is selected as the value of a last-transacted bid or offer price of that good or service plus or minus an offset. However, these steps are business choices and practice (e.g., stock prices are changing minute by minute based on the bid/offer of the dealers and how much profit/fee they are willing to accept). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of May and include spread as midpoint and wherein the next-determined bid price and offer price for a good or service is selected as the value of a last-transacted bid or offer price of that good or service plus or minus an offset to establish as market price with smallest price difference between the buy and sell to allow more trader use the system.

Art Unit: 3628

Re. Claim 6, May discloses wherein physical delivery of a physical good is accomplished outside the computer network [C23 L9-L17].

Re. Claim 7, May discloses providing computer software adapted to allow communication between the party and the plurality of counterparties over the computer network [Figure 1; C21 L55 to C22 L3; C10 L35-L48; C12 L3-L43];

evaluating each of the plurality of counterparties to determine a limit on credit to extend to each counterparty [C1 L35 to C2 40];

establishing contract terms with each counterparty for providing a governing contractual framework for automated buying and selling of the commodities between the party and each of the counterparties [C9 L5-L40; C23 L1-L26; C23 L56 to C24 L5];

specifying attributes for identifying each commodity to provide certainty in communications between the party and the counterparties for contemplated transactions, wherein the attributes are communicated to the counterparties over the computer network [C32 L17-L30; C33 L7-L18; C21 L55-67];

establishing a list in the computer software of bid and offer prices for specified volumes or quantities of a plurality of commodities, wherein the list is not communicated to the counterparties [Figure 16; C10 L35-L48; C53 L4-L39];

providing a first bid price from the list for a first commodity to the plurality of counterparties over the computer network, wherein the party is willing to buy a specified volume or quantity of the first commodity at the first bid price and

providing a first offer price from the list for the first commodity to the plurality of counterparties over the computer network, wherein the party is willing to sell the specified volume or quantity of the first commodity at the first offer price [Figure 22A; C12 L63 to C13 L5; C30 L50-L60];

receiving over the computer network from a first counterparty an offer to buy the specified volume or quantity of the first commodity [C11 L23-L34; C14 L9-L13];

providing a second bid price from the list for the first commodity to the plurality of counterparties over the computer network, wherein the party is willing to buy a specified volume or quantity of the first commodity at the second bid price and providing a second offer price from the list for the first commodity to the plurality of counterparties over the computer network, wherein the party is willing to sell the specified volume or quantity of the first commodity at the second offer price and providing bid and offer prices for the plurality of commodities for completing additional transactions [Figures 15-17, 22; C9 L27-L37];

receiving over the computer network from a second counterparty an offer to sell the specified volume or quantity of the first commodity [C11 L23-L34; C14 L9-L13];

using the computer software to automatically evaluate whether selling the specified volume or quantity of the first commodity to the first counterparty would exceed the first counterparty's credit limit and completing a first transaction, , by selling the specified volume or quantity of the first commodity to the first counterparty, provided the first counterparty's credit limit will not be exceeded and completing a second transaction, automatically, by buying the specified volume or quantity of the first

commodity from the second counterparty [C1 L63 to C2 L5; C2 L24-L39; C4 L65-L67; C10 L35-L48; C12 L3-L43]. May does not explicitly disclose without human intervention. It would have been obvious at the time the invention was made to a person having ordinary skill in the art that May's system is an automatic system which clearly discloses that the process is software process which means does not need human intervention to execute the orders. Therefore It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of May and include an automatic system using batch and queues to allow the system execute the orders without human intervention.

Re. Claim 8, May does not explicitly disclose wherein a third-party broker is not involved in any of the transactions so that it is not necessary to pay a commission to a third party. It would have been obvious at the time the invention was made to a person having ordinary skill in the art that May discloses an electronic trading systems using Internet for matching orders which does not need third party (e.g., agent, broker, middleman) for executing orders between the counterparties. Therefore for there is no requirement in May's system to pay a commission to a third party for either the purchase or the sale of the good or service to bring the transaction cost down and allowing to more people to trade using May's system.

Re. Claim 9, May discloses wherein the bid and offer prices are pushed from a computer operated by the party out over the computer network to the counterparties so

that the counterparties receive a next-established bid and offer price without requiring intervention by the counterparties [Figures 1, 12, 14A-14B, 18-19; C12 L17-L35; C14 L9-L14].

Re. Claim 10, May discloses wherein the commodities include natural gas, electricity, crude oil, cracked distillate products, hydrocarbon-based products, financial swaps, credit derivatives, bandwidth, lumber, or metals [C1 L35-L50].

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR ' 1.111 (c) to consider the references fully when responding to this action.

*US 6,408,282 to Buist, June 18, 2002 "System and method for conducting securities transactions over a computer network" discloses trading of securities over the Internet both on national exchanges and outside the national exchanges. Further, discloses an improved human interface and a continuous display of real-time stock quotes on the user's computer screen.*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harish T Dass whose telephone number is 703-305-4694. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S Sough can be reached on 703-308-0505. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3628

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Harish T Dass  
Examiner  
Art Unit 3628

3/15/05

Harish T Dass